

No. 5:14-CV-773-BO

Defendant.

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Case 5:14-cv-00773-BO Document 8 Filed 05/01/15 Page 1 of 2

presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing sent by certified or registered mail." 28 U.S.C. § 2675(a).


Because the FTCA's requirement that a claimant file an administrative claim is jurisdictional and may not be waived, "dismissal is mandatory when a plaintiff fails to file a claim with the proper administrative agency." *Henderson v. United States*, 785 F.2d 121, 123-24 (4th Cir. 1986).

Neither plaintiff's complaint nor his response to the instant motion demonstrates that he has administratively exhausted his claim, and thus this Court is without subject matter jurisdiction to consider it. Fed. Civ. R. 12(b)(1); *see also Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647-50 (4th Cir. 1999) (plaintiff has the burden of proving subject matter jurisdiction when challenged). Moreover, even if the Court were to have subject matter jurisdiction over plaintiff's claim, his complaint, which contains four bare assertions, contains no facts which would plausibly suggest that plaintiff is entitled to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, dismissal for failure to state a claim, is also appropriate. Fed. R. Civ. P. 12(b)(6).

CONCLUSION

For the foregoing reasons, the government's motion to dismiss [DE 4] is GRANTED and this action is DISMISSED in its entirety. The clerk is DIRECTED to enter judgment accordingly and to close the file.

SO ORDERED, this 30 day of April, 2015.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE